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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

GUILLERMINA ZAVALA
ROSAS,

 Plaintiff,

 v.
CAROLYN COLVIN, Acting
Commissioner of Social Security,

 Defendant.

} Case No. CV 13-2150-DFM
}
} MEMORANDUM OPINION AND
} ORDER

Plaintiff Guillermina Zavala Rosas (“Plaintiff”) appeals from the decision of the Administrative Law Judge (“ALJ”) denying her applications for disability insurance benefits and Supplemental Security Income benefits. On appeal, the Court concludes that ALJ correctly determined, at step four of the sequential evaluation process, that Plaintiff could perform her past relevant work. Accordingly, the ALJ’s decision is affirmed and this matter is dismissed with prejudice.

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1 I.

2 **FACTUAL AND PROCEDURAL BACKGROUND**

3 Plaintiff filed applications for benefits on August 11, 2009, alleging
4 disability beginning October 20, 2008. In an unfavorable opinion, the ALJ
5 concluded, based upon the testimony of a vocational expert (“VE”), that
6 Plaintiff could perform her past relevant work as a telephone solicitor.
7 Administrative Record (“AR”) 25-31.

8 II.

9 **ISSUE PRESENTED**

10 The parties dispute whether the ALJ erred in determining, at step four of
11 the sequential evaluation process, that Plaintiff was capable of performing her
12 past relevant work. See Joint Stipulation (“JS”) at 5.

13 III.

14 **STANDARD OF REVIEW**

15 Under 42 U.S.C. § 405(g), a district court may review the
16 Commissioner’s decision to deny benefits. The ALJ’s findings and decision
17 should be upheld if they are free from legal error and are supported by
18 substantial evidence based on the record as a whole. 42 U.S.C. § 405(g);
19 Richardson v. Perales, 402 U.S. 389, 401 (1971); Parra v. Astrue, 481 F.3d
20 742, 746 (9th Cir. 2007). Substantial evidence means such relevant evidence as
21 a reasonable person might accept as adequate to support a conclusion.
22 Richardson, 402 U.S. at 401; Lingenfelter v. Astrue, 504 F.3d 1028, 1035 (9th
23 Cir. 2007). It is more than a scintilla, but less than a preponderance.
24 Lingenfelter, 504 F.3d at 1035 (citing Robbins v. Soc. Sec. Admin., 466 F.3d
25 880, 882 (9th Cir. 2006)). To determine whether substantial evidence supports
26 a finding, the reviewing court “must review the administrative record as a
27 whole, weighing both the evidence that supports and the evidence that detracts
28 from the Commissioner’s conclusion.” Reddick v. Chater, 157 F.3d 715, 720

1 (9th Cir. 1996). “If the evidence can reasonably support either affirming or
2 reversing,” the reviewing court “may not substitute its judgment” for that of
3 the Commissioner. *Id.* at 720-21.

4 IV.

5 DISCUSSION

6 Plaintiff contends that the ALJ erred in determining, based upon the
7 testimony of the VE, that she was capable of performing her past relevant work
8 as a telephone solicitor because that job, as described in the Dictionary of
9 Occupational Titles (“DOT”), is incompatible with the ALJ’s residual
10 functional capacity (“RFC”) assessment. JS at 5-10. As relevant here, the
11 ALJ’s RFC assessment determined that Plaintiff was able to perform light
12 work with a limitation of “no work requiring depth perception and no
13 detailed/close up work.” AR 29. Plaintiff contends that this limitation
14 precludes her from performing her past relevant work as a telephone solicitor
15 because the DOT description of that job requires occasional “near acuity” and
16 frequent “accommodation.” JS at 5.¹

17 The ALJ’s determination was made at step four of Social Security’s five-
18 step disability determination process. At step four, the claimant must show that
19 she can no longer perform her past relevant work. *Pinto v. Massanari*, 249
20 F.3d 840, 844 (9th Cir. 2001) (citing 20 C.F.R. §§ 404.1520(e), 416.920(e)).
21 “The claimant has the burden of proving an inability to return to [her] former
22 type of work and not just to [her] former job.” *Villa v. Heckler*, 797 F.2d 794,
23

24 ¹ The Department of Labor defines “near acuity” as “clarity of vision at
25 20 inches or less.” See U.S. Department of Labor, *The Revised Handbook for*
26 *Analyzing Jobs* 12-7 (1991) (attached to JS as Exhibit 2). “Accommodation” is
27 defined as “adjustment of lens of eye to bring an object into sharp focus. This
28 factor is required when doing near point work at varying distances from the
eye.” *Id.* at 12-8.

1 798 (9th Cir. 1986). Although the burden of proof lies with the claimant at step
2 four, the ALJ still has a duty to make the requisite factual findings to support
3 her conclusion. SSR 82–62, 1982 WL 31386, at *4 (1982). This is done by
4 looking at the “residual functional capacity and the physical and mental
5 demands” of the claimant’s past relevant work. 20 C.F.R. §§ 404.1520(e),
6 416.920(e). If the ALJ determines that the claimant can perform the actual
7 functional demands and job duties of a particular past relevant job, either as
8 actually performed or as generally required by employers in the national
9 economy, then the claimant is not disabled. Pinto, 249 F.3d at 845; 20 C.F.R.
10 §§ 404.1520(f), 416.920(f).

11 Plaintiff testified at the administrative hearing that her job as a telephone
12 solicitor as she actually performed it involved calling companies on the
13 telephone to market moving truck services. AR 53. She did not use a computer
14 and she did not have to look up any phone numbers in the phone book because
15 the owner of the company had already “underlined or highlighted” the
16 numbers for her. AR 54. The ALJ then called a VE to testify about what
17 Plaintiff could still do despite her limitations. AR 62-67. The VE testified that,
18 given the ALJ’s RFC assessment, which included a limitation to jobs that did
19 not require depth perception or detailed/close up work, Plaintiff was capable
20 of performing her past relevant work as a telephone solicitor as Plaintiff
21 actually performed it. AR 65.²

22 Plaintiff argues that the telephone solicitor job exceeds her limitations
23 because the job requires near acuity and accommodation, which she is

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25 ² Although the ALJ stated that the VE testified that Plaintiff could
26 perform her past work as a telephone solicitor both as usually performed in the
27 national economy and as actually performed, see AR 32, the VE in fact
28 testified that Plaintiff was only able to perform her past work as actually
performed. See AR 65.

1 incapable of based on her RFC. Plaintiff's claim is unpersuasive. Although the
2 visual requirements of telephone solicitor as generally performed in the
3 national economy may arguably exceed Plaintiff's visual abilities, Plaintiff is
4 nevertheless capable of performing the job as she actually performed it.
5 Plaintiff testified that she called other companies using a directory in which the
6 telephone numbers were already highlighted or underlined by her supervisor.
7 She also answered all incoming calls. She did not have to use a computer or
8 any other equipment. AR 53-54, 171. Thus, the fact that Plaintiff's RFC
9 precluded her from "detailed/close up work" does not affect her ability to
10 perform the job of telephone solicitor as she actually performed it because,
11 based upon her testimony and other statements, she did not have to perform
12 any "detailed" or "close up work."

13 In support of her contention that she cannot perform the telephone
14 solicitor job, Plaintiff points to a written work history report in which she
15 checked a box indicating that the job of telephone solicitor required her to
16 "write, type or handle small objects" five hours per day. JS at 8-9 (citing AR
17 171). This statement does support Plaintiff's argument that she cannot perform
18 the telephone solicitor job because it conflicts with other statements Plaintiff
19 made at the administrative hearing. For example, despite Plaintiff's claim that
20 she was required to "write, type or handle small objects" five hours per day,
21 she testified at the administrative hearing that she only used the telephone to
22 make and receive calls and that she did not write or use a computer. See AR
23 53-54. Furthermore, contrary to her statement that she had to "write, type or
24 handle small objects" five hours a day, Plaintiff testified at the administrative
25 hearing that she worked as a telephone solicitor three or four days per week for
26 only four hours per day. AR 51. The ALJ also found that Plaintiff was not
27 fully credible regarding her symptoms and limitations, see AR 30, a
28 determination that Plaintiff does not challenge here.

1 Finally, Plaintiff has not pointed to any medical evidence in the record
2 to demonstrate that her vision-related impairments of possible glaucoma and a
3 history of pterygium in her left eye were sufficiently severe to preclude her
4 from performing her past relevant work as actually performed. In a March
5 2009 assessment, an ophthalmologist diagnosed possible glaucoma, presbyopia
6 requiring prescription glasses, and no diabetic retinopathy. AR 381. After
7 Plaintiff was diagnosed with pterygium of the left eye, she had a surgical
8 excision of the pterygium, which resulted in improved vision in the left eye.
9 AR 367-80. Plaintiff testified that her left eye was better once she had the
10 pterygium removed. AR 56-57. Tellingly, Plaintiff testified at the
11 administrative hearing that she stopped working at the telemarketing job
12 because the owner sold the business, not because she was no longer able to
13 perform the duties of the job because of her visual impairments. AR 51.

14 At step four of the sequential evaluation, Plaintiff bears the burden of
15 proving that she is unable to perform her past relevant work. Although Plaintiff
16 arguably is unable to perform her past work as a telephone solicitor as
17 performed in the national economy, she is nevertheless able to perform it as
18 actually performed. Accordingly, the ALJ's step four determination is
19 supported by substantial evidence, and Plaintiff is not entitled to relief.

20 **V.**

21 **CONCLUSION**

22 For the reasons stated above, the decision of the Social Security
23 Commissioner is **AFFIRMED** and the matter is **DISMISSED** with prejudice.

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25 Dated: March 26, 2014



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27 **DOUGLAS F. McCORMICK**
28 United States Magistrate Judge